In the Supreme Court of the United States

OCTOBER TERM, 1948

No. ——

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, APPELLANTS

v.

CAPITAL TRANSIT COMPANY ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

BRIEF IN OPPOSITION TO MOTION TO AFFIRM

Appellees' motions to affirm principally rely upon three grounds of attempted distinction between the case at bar and the earlier decision in *United States* v. *Capital Transit Company*, 325 U. S. 357.[1] The attempted distinctions were sufficiently discussed in the Statement as to Juris-

[1] The grounds upon which appellees seek to distinguish the holding in 325 U. S. 357, are (1) No war is now in progress; (2) No busses are now being operated by Capital Transit itself into Virginia; (3) *United States* v. *Yellow Cab Company*, 332 U. S. 218, relating to taxicab service to and from Chicago railroad stations, is analogous to the operations of Capital Transit.

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diction filed by the appellants and will not be further elaborated upon.

Appellees' other major contention is that the orders of the Interstate Commerce Commission which the district court set aside upon the ground that the Commission had no jurisdiction are invalidated by the terms of the proviso in Section 216 (e) of the Interstate Commerce Act, 49 U. S. C. 316 (e), which reads:

> *Provided, however,* That nothing in this part [Part II of the Act] shall empower the Commission to prescribe, or in any manner regulate, the rate, fare, or charge for intrastate transportation, or for any service connected therewith, for the purpose of removing discrimination against interstate commerce or for any other purpose whatever.

But the orders of the Commission involved in this proceeding prescribed maximum reasonable rates and divisions thereof applying "to the interstate transportation of passengers between all points in the District of Columbia, on the one hand, and the Pentagon Building, the Navy Arlington Annex, the Army Air Force Annex, and Washington National Airport in Virginia and Virginia Intermediate points, on the other." [2] It is thus evident from the very terms of the orders that they relate only to interstate transportation, and not to intrastate transportation.

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[2] Orders of June 22, 1945 and July 7, 1948, Exhibits A and L to complaint in No. 3052–48.

As disclosed by the legislative history which appellees themselves quote,[1] the effect of the proviso of Section 21b (e) is merely to exclude, with reference to motor carrier transportation, the applicability of the doctrine of *Houston East & West Railway Co.* v. *United States*, 234 U. S. 342, known as the *Shreveport* case. Under the principles established in that case, and the subsequently enacted provisions of Section 13 (4) of the Interstate Commerce Act, 49 U. S. C. 13 (4), the Interstate Commerce Commission is authorized, under certain conditions, to regulate intrastate rail rates.[2] By the proviso in Section 216 (e) Congress precluded the Commission from exercising, with respect to motor carriers, the powers over intrastate rates which the Commission possesses in the case of rail carriers by virtue of the *Shreveport* decision and Section 13 (4) of the Act. But the proviso, while preventing the Commission, in the case of motor carriers, from regulating intrastate rates "for the purpose of removing discrimination against interstate commerce or for any other purpose whatever," does not prohibit or affect in any way the Commission's power to regulate interstate rates.

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[1] Motion of Public Utilities Commission, p. 4.

[2] Section 13 (4) has been described as a codification of the rule enunciated in the *Shreveport* case. *North Carolina* v. *United States*, 325 U. S. 507, 513.

The orders of the Commission which the district court set aside were made pursuant to the Commission's power over interstate rates in accordance with the provisions of Section 203 (b) (7a) and (8) of the Act, 49 U. S. C. 303 (b), (7a), (8).[4] The orders plainly do not regulate intrastate rates or apply the *Shreveport* doctrine to them.

Capital Transit asserts (Motion to Affirm, p. 20) that there was no consideration or decision as to the effect of the proviso of Section 216 (e) in the reports of the Commission in this matter or in the prior decision of this Court. However, the second of the eight points urged in the brief filed by Capital Transit in *United States* v. *Capital Transit Company*, 325 U. S. 357, was devoted to this proviso. The fact that the opinion of this Court in that case did not discuss the point indicates, not that the point was given no consideration, but that it was regarded as irrelevant and without merit, since the Commission's order then, as now, related to interstate and not to intrastate transportation.

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[4] These provisions authorize the Commission to regulate interstate transportation within a commercially contiguous zone to a municipality if the Commission finds that such regulation "is necessary to carry out the national transportation policy declared in this Act." It should be noted that the necessary finding is one based upon the requirements of the national transportation policy, and not upon the provisions of any legislation applicable only in wartime.

Appellees appear to urge that the orders of the Interstate Commerce Commission were beyond its jurisdiction because of action taken by, or authority conferred upon, the Public Utilities Commission of the District of Columbia. For purposes of the Interstate Commerce Act, the District of Columbia is treated upon the same footing as a "State."[6] Consequently whatever the powers of the District's Public Utilities Commission might be in the absence of action by the Interstate Commerce Commission, it is plain that the federal power to regulate interstate commerce must prevail when exercised. *Gibbons* v. *Ogden*, 9 Wheat. 189, 210-11. Indeed the very provisions of the District of Columbia Code which appellees cite[7] as showing the Public Utilities Commission's power of regulating transportation "from one point to another within the District of Columbia" go on to provide expressly that such provisions "shall be so applicable and be so construed as to be free from conflict with those provisions of the Constitution of the United States and the laws in pursuance thereof relating to interstate commerce."[8]

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[6] Section 203 (a) (8) of the Interstate Commerce Act, 49 U. S. C. 303 (a) (8).

[7] Public Utilities Commission's motion to affirm, p. 4.

[8] 37 Stat. 977, D. C. Code 43-122. Transportation "from one point to another" within a state may unquestionably constitute a portion of an interstate movement. To the argument that Capital Transit "can have no knowledge * * *

For the same reason, there is no merit in the contention that the Commission's orders result in a discrimination against other users of Capital Transit service within the District. That argument is based upon the fact that a passenger making a local trip within the District might be traveling the same distance on Capital Transit's vehicle as another passenger going on to Virginia, but would not be paying the same fare. But this situation is merely one of the inevitable incidents of our federal system of government and of accepted principles of rate making.* It frequently happens that interstate rates for transportation embracing a segment within a particular state are different from, or lower than, the intrastate rates applicable between the same points. Cf.

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as to the destination of a passenger" going to Virginia (Public Utilities Commission's motion, p. 10), the obvious answer is that special tickets are issued for the interstate journey, and the company knows that passengers presenting such tickets claim the benefit of the interstate rate.

*Transportation rates are not always proportionate to distance. *Minneapolis & St. Louis Railroad Co.* v. *Michigan*, 186 U. S. 257, 262; *St. Louis Southwestern Ry. Co.* v. *United States*, 245 U. S. 136, 140; *Ayrshire Collieries Corporation* v. *United States* (No. 25, October Term 1948), slip opinion pp. 14–18. For that matter, Capital Transit's own rates within the District are not based upon distance. Passengers riding locally do not all pay the same fare proportionate to distance traveled. There is no difference in the fare collected by Capital Transit, whether a District passenger rides several miles or only several city blocks.

Texas Pacific Ry. v. *Interstate Commerce Commission*, 162 U. S. 197, 217.

Respectfully submitted.

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MARCH 1949.

U. S. GOVERNMENT PRINTING OFFICE: 1949